Supreme Court, U. S.
FILED
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MICHAEL

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6336

GEORGE HERMAN ROGERS, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 2, 1974
CERTIORARI GRANTED OCTOBER 15, 1974

INDEX

	Original	Print
Record from the United States District Court for the Western District of Louisiana, Shreveport Division		
Docket entries	A	1
Indictment filed September 12, 1972	E	5
Transcript of proceedings of March 21 and 22, 1973 (excerpts)	1	7
Testimony of—		
Mildred Cruz:		
Direct	6	7
Cross	11	9
Mary Reynolds:		
Direct	23	14
Cross	27	15
Margie Walker:		
Direct	40	16
Cross	48	16
R. E. Buchannan:		
Direct	55	19
Cross	59	20
Thomas J. Page:		
Direct	69	24
Cross	83	27
Redirect	98	36
William Burson:		
Direct	99	36
Cross	104	38
Redirect	112	42
Dr. Andrew J. Mullen:		
Direct	113	42
Cross	120	44
Redirect	123	45
John Clayton:		
Direct	125	45
Cross	130	47
Roxie Everett:		
Direct	146	48
Cross	148	50
Charge of the court	176	50
Note from Jury to the Court, dated March 22, 1973 and reply of court	198	52
Proceedings in the United States Court of Appeals for the Fifth Circuit	199	52
Opinion, Per Curiam	199	52
Judgment, January 14, 1974	204	53
Order allowing certiorari	205	57

564-964—74——1

Closed Case

CRIMINAL DOCKET

20225

SHREVEPORT

THE UNITED STATES

v.

GEORGE HERMAN ROGERS

(5 Counts)

Violation: 18 USC 871—Extortion and Threats
For U.S.: DONALD E. WALTER and L. EDWIN GREER
For Defendant: Ralph W. Parnell, Jr., 1212 Mid-South Towers, Shreveport, La., 71101. (APPTD)

Abstract of costs	Amount	Cash received and disbursed			
		Date	Name	Received	Disbursed
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
Ct. of Appeal, (Pauper) 5-11-73					

Date	*Proceedings*
9- 72	INDICTMENT, filed.
9-15-72	Order by U.S. to have defendant examined further directing that the deft. be committed to the custody of the Attorney General for psychiatric examination and evaluation, the deft. to remain so committed until the findings of attending psychiatrist are reported to this Court and a sanity hearing is held and further that the U.S. Marshal for the W/D of La. deliver the Deft. to the Medical Center for Federal Prisoners, Springfield, Missouri, or other institution as may be designated by the Director, Bureau of Prisons, signed and filed. (bedjr)
9-18-72	Two copies of Order given U.S. Marshal.

Date	Proceedings
9-26-72	Order, this Court having under provisions of 18 USC 4244 committed deft. to the custody of the Attorney General for psychiatric Examination and evaluation by order of 9-15-72, IT IS ORDERED that the deft's bond be and hereby is revoked and that he be so committed to the Attorney General's custody, signed and filed. (bcdjr)
	Two certified copies given U.S. Marshal and one to the U.S. Attorney and Probation Officer.
10-17-72	IT IS ORDERED that the bond posted in this case be cancelled and the money refunded to the * * *
10-17-72	Minute Entry regarding returning money posted in this case and ordering the bond cancelled was given to the Clerks Office from Judge Dawkins by Capt. Jones. Mrs. Roxie Mae Everett, surety on cash bond signed receipt for the $1,000.00 money.
12- 6-72	Return on Order filed 9-15-72, filed. See return for details.
2-26-72	Petition for Writ of Habeas Corpus and affidavit of poverty filed on behalf of George H. Rogers.
2-26-72	Memorandum Order of Judge Dawkins, Jr. signed this date (1) permitting Mr. Rogers to file and prosecute his petition for habeas corpus in forma pauperis, and (2) which, for reasons set forth therein, DENYS said petition and dismisses same, filed. (BCDJR) Notice of entry given by Clerk 12-27-72 by mailing copies of this entry and of said Order to Mr. Rogers; and to Messrs. Parnell and Greer. (NOTE: Copy of the Rogers petition (handwritten) also mailed to U.S. Atty.)
1- 5-73	IT WAS ORDERED that the bond in this case be fixed in the sum of $5,000.00 and Defendant allowed to post 20% of said bond under the BAIL REFORM ACT. The Court placed a further restriction on bond in that defendant is restricted to travel from Shreveport to Bowie County, Texas and return to Shreveport for Court Appearances when required. (bcdjr) Notice of entry given U.S. Marshal, U.S. Attorney and Counsel for Defendant.
1- 5-73	Defendant present, represented by counsel aforesaid. Case came on for hearing to determine if the Defendant is mentally competent to stand trial and assist counsel at said trial. A report of psychiatric examination of the Defendant was admitted into evidence, same determining by attending physician that the Defendant is mentally competent and able to assist counsel, and it was so ordered by this Court that Defendant is mentally competent and able to assist his counsel at his trial.
1- 8-73	U.S. Magistrate's record of proceedings of January 5, 1973, filed. Appearance bond (CASH) in the sum of $1,000.00, which is 20% of the $5,000.00 bond set by the Court on 1-5-73, on behalf of defendant, GEORGE H. ROGERS, Rt. 1, Box 229, Maud, Texas 75567; SURETY: Mrs. ROXIE M. EVERETT, Rt. 1, Box 229, Maud, Texas 75567, filed.

Date	Proceedings
2- 5-73	SET FOR TRIAL 3-19-73 in SHREVEPORT, LA. (EFHJR)
3-19-73	This case having been fixed for TRIAL this date and due to an oversight that counsel for defendant did not receive a copy of the indictment this morning and further that defendant had not been arraigned, it was ordered that the trial of this case be continued. Counsel for defendant filed a "Motion on behalf of Defendant" for Continuance which was GRANTED by the Court. Defendant present, represented by counsel aforesaid, was arraigned and entered a plea of NOT GUILTY and the case was tentatively fixed for trial on WEDNESDAY, MARCH 21, 1973. (bcdjr)
3-21-73	This case came on for TRIAL both sides announced ready. The witnesses were placed under the Rule and excluded from the Courtroom. Requested questions to be propounded to prospective jurors during the voir-dire examination filed on behalf of the Deft. The Jurors were drawn, etc. Stipulation signed by all counsel and Deft. with the Court's approval that in the event any of the jurors become incapacitated or unable to serve until the final verdict of 11 or ten but not less than 10 members may reach a verdict if the decision is unanimous. (continued)
3-21-73	Opening statements made on behalf of both sides. Oral testimony adduced on behalf of the Govt. until 4:31 P.M., at which time Court Adjourned. (bcdjr)
3-22-73	Further testimony adduced on behalf of the Govt. until 10:14 A.M., at which time the Govt. closed. Written motion on behalf of Deft. for Judgment of Acquittal at the close of the Govt's case submitted and denied. Oral test. add. and doc. evidence filed on behalf of the Deft. until 11:25 A.M., and rested. Oral motion at the close of all the evidence for Judgment of Acquittal submitted by counsel for Defendant and denied. Requested Jury instructions filed on behalf of the Defendant as well as the Court's charges, filed. Case argued, jury charged and at 3:00 P.M., the jury retired for deliberation. At 5:00 P.M., the jury returned into open Court and rendered the following verdict: GUILTY AS TO ALL FIVE COUNTS. The Jury ordered polled, verdict ordered entered as the Judgment of this Court and the case referred to the Probation Office for presentence investigation and report. The Court ordered the note from the jurors, signed by the Foreman regarding the verdict to be rendered ordered filed in the record. The Defendant released on his present bond. (bcdjr)
5- 4-73	Defendant present, represented by counsel Ralph W. Parnell, Jr. for sentence. ON COUNT ONE, it was ordered that Defendant be committed to the custody of the Attorney General for a period of five (5) years, defendant is to be eligible for parole at such time as the Board of Parole may determine under Title 18 USC 4208(a)(2). ON COUNTS 2, 3, 4 and 5, defendant ordered committed to the custody

Date	Proceedings
	of the Attorney General for a period of five (5) years on each count to run concurrently with each other, execution of confinement sentence as to Counts 2, 3, 4 and 5 be suspended during good behavior and defendant placed on supervised probation for a period of five (5) years, said probation to begin at the expiration of the confinement sentence. Special condition of his probation defendant is to join and actively participate in the organization of Alcoholic Anonymous. Defendant released on present bond until 9:00 A. M., May 18, 1973 at which time he is to report to the U.S. Marshal in Shreveport, Louisiana to begin serving confinement sentence. The Court further ordered that should defendant desire to file an Appeal, said appeal would be allowed to be filed in forma pauperis. JUDGMENT AND COMMITMENT, SIGNED AND FILED. (bedjr)
5- 8-73	Two certified copies of commitment issued and delivered to the Marshal.
5-11-73	Defendant's NOTICE OF APPEAL, FILED. Order allowing deft. to appeal in forma pauperis, without prepayment of costs, stenographic transcript to be furnished at the expense of the Govt., the expense is to be paid by the U.S. when authoriz. by the Director of the Admn. Office, signed and filed. (bedjr)
5-14-73	Certified copy of Notice of appeal with order allowing said appeal to be filed and prosecuted in forma pauperis, mailed with copy of Clerk's Docket sheet and CJA Appointment of counsel to Clerk, U.S. Court of Appeals. Certified copy of Notice of appeal and Order mailed to Mr. Parnell, U.S. Attorney U.S. Marshal and U.S. Probation Officer, and Mr. Sidney Young, Court Reporter.
5-18-73	At the request of the Sureties on the Defendant's bond, IT WAS ORDERED that the bond be cancelled and the money refunded to the owners thereof. (bcdjr)
5-22-73	Marshal's return on commitment issued 5-4-73, filed. Defendant delivered to Federal Correctional Institute at Texarkana, Texas on May 18, 1973.
6- 5-73	Court Reporter's transcript of proceedings of 3-21 and 3-22, 1973, filed.
6-15-73	Defendant GEORGE HERMAN ROGERS' Petition for Writ of Habeas Corpus under T. 28 USC, Sec. 2255, attacking sentence imposed 5-4-73.
6-15-73	Memorandum Order signed by Judge Ben C. Dawkins, Jr. on June 15, 1973, which DISMISSES applicant's petition as being premature, as final judgment has not been rendered in the case, inasmuch as it is awaiting decision by the Appellate Court, signed and filed. (BCDJR) Notice of entry given by Clerk 6-15-73 by mailing copies of this entry and the Memorandum Order to Mr. Rogers and US Attorney Walter. (ALSO APPLIES TO CIVIL NO. 18,567)

Indictment—Filed September 12, 1972

In the United States District Court for the Western District of Louisiana, Shreveport Division

Criminal No. 20,225 (18 U.S.C. 871)

UNITED STATES OF AMERICA

v.

GEORGE HERMAN ROGERS

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 24th day of March, 1972, in the Shreveport Division of the Western District of Louisiana, GEORGE HERMAN ROGERS, in the presence of Mary Reynolds, wilfully and knowingly, did make an oral threat to inflict bodily harm upon the President of the United States in the verbal use of threatening language, substantially as follows: "I am going to Washington and beat the ass off Nixon." (18 U.S.C. 871)

COUNT TWO

On or about the 24th day of March, 1972, in the Shreveport Division of the Western District of Louisiana, GEORGE HERMAN ROGERS, in the presence of Mildred Cruz and R. E. Buchanan, wilfully and knowingly did make an oral threat to inflict bodily harm upon the President of the United States in the verbal use of threatening language, substantially as follows: "I am going to whip Nixon's ass." (18 U.S.C. 871)

COUNT THREE

On or about the 24th days of March, 1972, in the Shreveport Division of the Western District of Louisiana, GEORGE HERMAN ROGERS, in the presence of Mildred Cruz, wilfully and knowingly, did make an oral threat to take the life of, and to inflict bodily harm upon, the President of the United States, in the verbal use of threatening language, substantially as follows: "If I could get to Nixon, I would kill him." (18 U.S.C. 871)

COUNT FOUR

On or about the 24th day of March, 1972, in the Shreveport Division of the Western District of Louisiana, GEORGE HERMAN ROGERS, in the presence of Thomas J. Page, wilfully and knowingly, did make an oral threat to inflict bodily harm upon the President of the United States in the verbal use of threatening language, substantially as follows: "I am going to Washington and beat Nixon's ass." (18 U.S.C. 871)

COUNT FIVE

On or about the 24th day of March, 1972, in the Shreveport Division of the Western District of Louisiana, GEORGE HERMAN ROGERS, in the presence of William M. Burson, wilfully and knowingly, did make an oral threat to inflict bodily harm upon the President of the United States in the verbal use of threatening language, substantially as follows: "I am going to Washington and beat up Nixon." (18 U.S.C. 871)

A true bill:

WILLIAM POSEY BAGNELL,
Foreman.

Donald E. Walter,
DONALD E. WALTER,
United States Attorney.
L. Edwin Greer,
L. EDWIN GREER,
Assistant United States Attorney.

In the United States District Court, Western District of Louisiana, Shreveport Division

Criminal No. 20,225

UNITED STATES OF AMERICA
vs.
GEORGE HERMAN ROGERS

Transcript of proceedings in the above-entitled action before the Honorable Ben C. Dawkins, Jr., United States District Judge, and a Jury, at Shreveport, Louisiana on March 21 and 22, 1973.

APPEARANCES

Messrs.: L. E. GREER, Assistant U.S. Attorney, On Behalf of the Government; RALPH W. PARNELL, JR., Court Appointed Attorney, On Behalf of the Defendant.

2–6 * * * * *

MILDRED CRUZ, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. GREER:

7 * * * * *

Q. Mrs. Cruz, will you describe for the jury and the court the circumstances when you first saw him that morning?

A. I don't think I ever noticed him when he first came in the dining room. I didn't wait on him and he was sitting alone and when I first noticed the gentleman he laughed out loud.

Q. About what time of morning was that?

A. Shortly after we opened the dining room, about six-thirty.

Q. That was the dining room at the Holiday Inn North?

A. Yes, sir.

Q. Did he say anything to you?

A. He began to try to talk to us and we tried to ignore him and as I walked in front of the room he kept calling out to me and I went over to the table to talk to him so the other guests would not hear.

Q. Were you assigned to wait on his table?

564-964—74——2

A. We don't have designated stations.

Q. Did you go over to his table?

8 A. Yes, sir. He called to me one time. We sat down at our table and he kept turning and trying to talk to us.

Q. Who is "us"?

A. Margie Walker, the other waitress. He was sitting at the table next to that table.

The first we noticed anything out of order other than laughing out loud was when I remarked to Margie that I wished it would stop raining and he said, "Would you like for me to stop it."

I said, "We better leave that up to a higher power" and he said, "That's me." And we ignored it and other customers came in. He called me one time across the room and that's when he began to talk to me at that time.

Q. What did he say during that conversation?

A. He was sort of confused. He was talking about the Red Chinese and the President and something about the Red Chinese had a bomb and nobody knew about this bomb but him and if he could get to Nixon before they used that bomb, he could save us and if he didn't we would be blown up. He said he had a little girl he wanted to save and it was his child and then he referred to a niece and nephew.

Q. What else did he say regarding Nixon?

A. He wasn't making a lot of sense. He said he was going to write him a letter. Another time he said he was

9 going to whip his ass and another time he said he was going to kill him in order to save the United States.

Q. Was he going to do this himself?

A. He said he was. He said he was going to Texas and then go to Washington and he was confused where he was going and he felt he had to get to Nixon before the Red Chinese used the bomb.

Q. Did he remain at the same table?

A. He got up and left and then came back and had a cup of coffee and he joined another guest.

Q. Did he remain with that guest?

A. I believe he did until we went to the cashier to call the police and they came. I believe he walked outside with the police at that time.

Q. He did drink coffee?

A. Yes, sir, he drank several cups of coffee.

Q. Were you afraid when this was taking place?

A. Yes, sir, I was scared.

Q. Did he appear to be joking?

A. No, he was serious. He was sort of confused but he was serious.

Q. Did he say anything personal to you?

A. Just one remark and he called out across the dining room and he said, "I'll buy that." I said, "What?" And he said, "Your pink pants."

10 Q. Did the defendant appear drunk when he was in the dining room?

A. No, sir, he did not appear drunk.

Q. Did you smell any alcohol on his breath?

A. No, sir.

Q. In waiting on him would you have an opportunity to smell alcohol?

A. Yes, you could usually tell but he seemed completely normal. He didn't have slurred speech.

Q. Was there any redness or watering of his eyes?

A. No, sir.

Q. Was his walk unsteady in any way?

A. No, sir.

The COURT. Did you smell anything on his breath?

The WITNESS. No, sir.

The COURT. How close did you get to him?

The WITNESS. Just to walk up to pour his coffee. My first thought was, maybe he was taking dope, and I don't know anything about that.

By Mr. GREER:

Q. In drinking his coffee was there any inability to coordinate his hands?

A. No, sir, there wasn't.

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CROSS EXAMINATION

By Mr. PARNELL:

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Q. Were you facing him?

A. No, I had my back to his table.
Q. How far apart are these tables?
A. Probably as far as from this gentleman right here.
Q. Which direction was he facing?
A. He was sitting with his back to our table.
Q. Did he have anything with him—a suitcase or paper sack?
A. No, sir. I don't believe he did.
Q. Did he have a raincoat?
A. He wore a cap and never removed the cap.
Q. What kind of cap? Describe it?
A. I don't know whether I can. It was like a ball cap, with a brim.
Q. You recall the color of the cap?
A. No.
Q. You recall what clothing he had on?
A. No, sir.
Q. The color?
A. No, sir.
Q. Did he have a suit on?
A. I couldn't tell you. I don't remember how he was dressed.
Q. I believe you testified the first time you
14 noticed the defendant was when he began to laugh out loud?
A. Yes. When a man sits by himself you turn and listen.
Q. Was it a snicker?
A. No, it was a boisterous laugh.
Q. How many times did he do it?
A. He did it several times. Other guests asked what was wrong with the man.
Q. How long did he sit there before he began to laugh?
A. Shortly after he sat down.
Q. Were there other guests coming in?
A. Yes, other guests ate breakfast and left during the time he was there.
Q. Were you real busy?
A. We weren't real busy until after he left.
Q. You recall how many tables you waited on?
A. I waited on one table with three men because they questioned me about it. We are trained if there is anything odd going on to keep it quiet as possible.
Q. What do you mean "odd"?

A. If there is any squabbling. We don't want other guests to be disturbed.
Q. This is part of your training at the Holiday Inn?
A. Yes, sir, definitely.
15 Q. After you would wait on the other tables would you return?
A. We can go back to our corner and sit or stand.
Q. How far were you from Mr. Rogers?
A. About four or five feet until he got up and moved to another table.
Q. You testified he tried to talk to you?
A. He kept calling and said, "Little lady, come here." And I would go so nobody else could hear.
Q. These other gentlemen called and they asked you about him?
A. They said, "What's wrong with that man?"
Q. What did you reply?
A. I said, "I don't know what's wrong with him." And they ate and left. I believe they were hunters and left.
Q. You further testified Mr. Rogers was acting odd?
A. He was very old.
Q. Tell me exactly what you mean by that?
A. Well, the fact that he had all these secrets about the Red Chinese and would look down into his lap and look sad and then he would laugh real loud like something was funny.
Q. The only act you refer to is he was looking in his lap and would laugh?
A. Yes, laugh real loud and then he would call.
16 Q. Was he at any time impolite at all?
A. No, except for the one remark to me he never said anything personal.
Q. Did he at any time ask you to sit down at his table?
A. No, he did not.
Q. What was the first statement he said to you?
A. I couldn't tell you exactly what he said first.
Q. What did he say about stopping the rain?
A. I was talking to Margie and she was sitting with her back to him and I said, "I wish this rain would stop." And he said, "Do you want me to stop it?" And I turned and I said, "We better leave that to higher authority" and I laughed.
Q. Did you think he was kidding or joking?
A. I didn't know. I didn't want to discuss it.

Q. Did he say it in jest?
A. He said it seriously.
Q. Why did you laugh?
A. What would you do if somebody told you they were going to stop the rain?
Q. I would laugh.
A. It was funny to me.
Q. Was that the only real conversation you had with him?

17 A. I had one other conversation when he called me and I went to his table and took the coffee and that's when he told me about the bomb and the Red Chinese.

Q. During this only real conversation you had with him, specifically what did he say?
A. He said something about he was in the Secret Service, or something, and was rambling and he said he knew about this bomb the Red Chinese had and they were going to blow up the United States and he said he had a little girl and he said, "I want her to have a good world to grow up in." And he blamed Nixon with it. He said, "If I could find Nixon, I will kill him and when I do everything will be all right."
Q. You said he was rambling. What else did he talk about?
A. Not really rambling. He said he had a little girl and that's the only remark he made and he said something about his mother being such a good woman and his mother had a lot of land and he was going home for Easter and visit his niece and nephew and they thought he was such a fine person. It wasn't interesting to me. I wasn't paying that much attention. I was trying to end the conversation and get away from him.
Q. Here was a guy taking up your time and you were busy and you were trying to get away from him?

18 A. Yes. I went to Mrs. Reynolds to call the police before we got busy.

Q. Primarily is that why you went to Mrs. Reynolds?
A. Yes. I told her twice to get him out of the dining room.
Q. Did you tell her why?
A. I said there was something wrong with him.
Q. Did you tell her specifically?
A. I said that he said he was going to kill the President and he said something about a bomb and Mrs. Reynolds left to go see if he left.
Q. Did you tell her he was acting confused?

A. Yes, I did. I told her there was something definitely wrong with him.
Q. Did you tell her he might be on some dope?
A. I said there was something wrong with the man and he needs to be gotten out of the dining room.
Q. Was he taking up too much of your time?
A. He wasn't that bothersome to me, really.
Q. I believe you testified you did not smell any alcohol?
A. No, I didn't.
Q. His speech was not slurred?
A. No.
Q. He did not sway when he walked?
A. No, sir.

19 Q. Would it have been possible for you to have missed or not detected alcohol on his breath?

A. Anything is possible.
Q. He could have been drunk without your knowing it?
A. I am sure he could.
Q. He could have been taking some kind of drugs?
A. I don't know anything about drugs. I have never seen anybody on drugs and I don't know how they act.
Q. Was the man acting, in your opinion, normal?
A. No, definitely not.
Q. Were you scared when he first sat down at the table?
A. I don't think I got scared until he said what he did about my pink pants. I didn't know what to expect next.
Q. That remark scared you?
A. Yes, sir.
Q. Not the other remarks?
A. No, it didn't scare me when he said he was going to kill the President.

* * * * *

20 * * * * *

Q. Mrs. Cruz, back to the statement where he said, "I am going to whip Nixon's ass." Did he say this directly to you?
A. I believe this particular remark was addressed to Margie and me both. He was talking to both of us at the table.
Q. You had your back to him?
A. Yes.
Q. What about the remark, "If I could get to Nixon I would kill him"?
A. That's when I was standing at the table.

Q. Did he describe the bomb?

A. No. He said the Red Chinese were dirty dogs and they had a bomb and if they used it, it would blow us all up.

Q. What was he going to do about it?

21 A. He said, "I am going to kill Nixon."

Q. Did he ever use the word "President"?

A. No. All he said was, "Nixon".

Q. Do you know where President Nixon was on March 24, 1972?

A. No, I have no idea. He seemed confused whether Nixon was in Washington or Texas.

Q. Did he mention a specific place in Texas?

A. No, not to me.

Q. Did he tell you he was going to Texas?

A. Yes, he did. He was going to find Nixon in Texas and another time he was going to Texas and then to Washington.

Q. Did he say how he was going to Texas?

A. No.

Q. Did he say when?

A. No.

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MARY REYNOLDS, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. GREER:

* * * * *

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Q. Did you have occasion to notice him during the ensuing minutes while he was there?

A. Not being busy, I wandered over in the dining room and sat down at the table with the waitress.

Q. About how far away from his table was that table?

A. There was a table adjoining.

Q. Did you hear any remarks he might have made while you were sitting there?

A. I sat down in time to hear him say his mother was a wise woman and he did turn to a guest and ask him if he stood out front could he possibly catch a ride to Texarkana, and I got

up to leave in time to hear him say he hated the Chinese and he was going to Washington and beat the ass off the President.

Q. Did he connect this act that he was going to do with the Chinese in any way?

A. No, that's all I heard him say and I walked off.

* * * * *

26–35 * * * * *

CROSS EXAMINATION

By Mr. PARNELL:

36 * * * * *

Q. What did he say to Mr. Buchannan about a ride?

A. He said would it be possible to catch a ride to Texarkana if I stood in front.

Q. Did Mr. Buchannan answer him?

A. He said, "I assume so."

Q. Did you hear him say that?

A. Yes.

Q. At what point in time did Mr. Rogers say he hated the Chinese?

A. I had just started to get up when he said it.

Q. What exactly did he say?

A. He said, "I hate the Chinese."

Q. That's all you heard?

A. No. Then he made the other remark.

Q. You heard him say, "I hate the Chinese" one time as you were leaving?

37 A. Yes.

Q. What else did you hear him say?

A. He said, "I am going to Washington and beat the ass off the President."

* * * * *

Q. What was your reaction to the remark?

A. Nervousness.

Q. Did you think Mr. Rogers was serious when he said this?

38 A. Not knowing the gentleman, I could not say whether he was serious.

Q. You just didn't know?

A. No, sir.

Q. Did it scare you?

A. Not afraid—it made me nervous but not afraid.

* * * * *

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MARGIE WALKER, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. GREER:

* * * * *

41 * * * * *

Q. On that day, did anything unusual happen that morning?

A. Yes, sir, a man came in and sat down at the table next to the waitresses' table.

* * * * *

42 * * * * *

Q. Is that the way he put it?

A. Yes, sir.

Q. Was he making this lightly as a joke?

A. I don't think so.

43 * * * * *

Q. With your seeing him and waiting on him, did he appear to be intoxicated?

A. I thought he was at first from the way he was talking but I was close enough to him when I served coffee I didn't smell anything.

Q. You didn't notice any water in his eyes?

A. No, sir.

Q. When he walked, was he staggering or stumbling?

A. No, sir.

48 * * * * *

CROSS EXAMINATION

By Mr. PARNELL:

Q. I think you testified he talked about the Chinese. Who was he talking to?

A. I guess he was talking to Mildred Cruz because she talked to him.

Q. Was he facing your table?

A. I am not sure. Sometimes I think he was but most of the time, no.

Q. What specifically did he say about the Chinese?

A. He just didn't like them and he felt it was President Nixon's fault we didn't get along with them.

Q. How long did he talk about the Chinese?

A. That's all I remember him saying.

Q Were you paying that much attention to what he was saying?

A. Not all the time, no.

Q. Did he refer to the Chinese before he talked about his mother or after?

A. Before.

Q. What did he say about his mother?

A. The thing I remember is she owns some land in Texas.

49 Q. Was he talking to Mildred again?

A. I am not sure. He was just talking.

Q. To no one in particular?

A. No, sir.

Q. Did you hear him say he hated the Chinese?

A. I don't think so.

Q. Did you hear him say anything about a bomb the Chinese had?

A. If he did I don't remember.

Q. What were the specific words he said about Nixon?

A. He said he was going to write Nixon a letter and then he sat for a while and then he said he was going to Washington and whip his ass and that's all he said.

Q. Did he say President Nixon?

A. He said Nixon.

Q. Did he say he was going to Washington to whip his ass or Nixon's ass?

A. Nixon's ass.

Q. What did he say immediately after he said he was going to write Nixon a letter?

A. He didn't say anything.

Q. Did he say anything about the content of the letter he was going to write?

A. No, sir.

Q. He made the statement, "I'm going to write Nixon

50 a letter"?

A. Yes.

Q. And then there was a silence?

A. As far as I remember.

Q. Was there silence between the time he talked about the Chinese and the time he was going to write Nixon a letter?

A. It was all in the same conversation.

Q. Did he say when he was going to Washington to whip Nixon's ass?

A. Not as I recall.

Q. Did he indicate to you he was leaving that day to go to Washington?

A. No, sir.

* * * * *

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Q. I believe you said when you first heard him talking you thought he was drunk; is that correct?

A. Yes.

Q. Why did you think he was drunk?

A. He would laugh and he was talking about Texarkana and he would laugh, and things like that, and I thought maybe that's what was wrong with him.

Q. What made you change your mind?

A. When I went over and served the coffee and I was close enough and I didn't smell liquor and I would say maybe he wasn't drunk or drinking.

Q. How close did you get to him?

A. I was right by him.

Q. Would the absence of liquor on his breath indicate the man wasn't drinking?

A. Yes, sir.

Q. Did you form any other opinion why he was

52 acting odd?

A. No.

Q. You totally dismissed the idea of drinking from your mind?

A. Yes, sir.

* * * * *

Q. Did you think he was serious in his statement that he was going to Washington to whip Nixon's ass?

53 A. He wasn't laughing. I thought he might.

Q. What was your immediate reaction after he said the statement?

A. I don't remember. I didn't get real excited.

Q. It did not excite you?

A. No.

Q. Was Mr. Rogers at all times a gentleman?

A. As far as I recall, yes.

Q. Was he always polite to you?

A. Yes.

Q. Courteous?

A. Yes.

Q. He did not say anything off color to you?

A. No.

Q. How long was Mr. Rogers seated at this table?

A. Maybe ten or fifteen minutes.

Q. He was at the Holiday Inn a total of ten or fifteen minutes?

A. Yes, sir.

Q. It is your testimony he never directly conversed or talked to you?

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R. E. BUCHANNAN, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. GREER:

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Q. During the time he was sitting at his table and you were sitting at your table did you hear him say anything?

A. He was talking to the waitresses rather boisterously a little bit, maybe irrationally.

Q. Did he come and sit at your table at any time?

A. Yes, he did.

Q. What was said between you and the defendant while he was at your table?

A. He was very upset over Nixon's trip to Peking and he said he had no business going over there—Nixon had no business going to China and talking with those people over there—the

Chinese Communists. He didn't think it was at all proper and he was going to whip his ass.

Q. He was going to whip whose ass?

A. Nixon's ass.

Q. Did he say anything more about Nixon's trip to China?

A. No, except Nixon had no business going to China and talking to the Chinese.

Q. And for that he was going to whip Nixon's ass?

A. Yes.

58 Q. During the course of the conversation, did he ask you about hitchhiking a ride anywhere?

A. To Texarkana, yes.

Q. What did he say about that?

A. He had first asked if that highway was not the highway to Texarkana and asked me if I was going that way.

Q. What was your response?

A. No, I wasn't and I wasn't.

Q. In your conversation with the defendant did he appear to be intoxicated?

A. No, he did not. At first when I went in, I thought he was intoxicated. Let me rephrase it. I thought that he was drinking, but when he sat at my table I realized he wasn't drinking.

Q. Was there any unsteadiness in his walk?

A. No.

Q. Any inability to communicate in his talking?

A. No.

Q. Red or watery eyes?

A. No.

Q. Odor of alcohol on his breath?

A. No.

* * * * *

59 CROSS EXAMINATION

By Mr. Parnell

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60–61 * * * * *

61 Q. Did you hear any conversation or did you have any conversation with Mr. Rogers before he came to your table?

A. No.

Q. What did he first say to you when he came to your table?

A. I believe whether the highway out there was the highway to Texarkana.

Q. Did he sit down at your table?

A. Yes.

Q. Did you invite him to sit down?

A. No, I didn't invite him, but I would say this: I did not verbally invite him but I gave him the acknowledgement I would give any stranger that came over.

Q. He was requesting directions to Texarkana; is that correct?

A. He was asking if that was the highway to Texarkana.

Q. What did you tell him?

A. I told him, yes, it was.

Q. Did he ask you if you were going to Texarkana?

A. He asked me if I was going that way.

Q. What did you tell him?

A. I told him no.

Q. Did you discuss anything further about his ride to Texarkana?

63 A. No.

Q. Did he stay seated at your table?

A. Yes.

Q. What was the next line of conversation that ensued?

A. It was concerning Nixon's trip to China.

Q. After you told him this was the road to Texarkana and you were not going, the next thing he said was something about the Chinese and Nixon going to Red China?

A. He sat down and this was the conversation which followed.

Q. Were you joining in the conversation? Were you talking with him?

A. No, I was listening.

Q. Did you express any opinion about Mr. Nixon's trip to Red China?

A. No, I didn't. Truthfully, I left and I chose not to express my opinion.

Q. Was Mr. Rogers polite and courteous and gentlemanly to you?

A. Yes, he was a gentleman.

Q. Mr. Buchannan, do you recall whether Mr. Nixon left to go to Red China yet? Do you recall the date of Mr. Nixon's trip?

A. No, I don't.

64 Q. Do you recall if he had already gone to Red China?

A. No, I think the trip already transpired or it was in the middle of the time the papers were carrying comments and editorials concerning the trip. It was very much in front of us at that time. I do know that.

Q. Will you tell me specifically what expression or opinion Mr. Rogers gave about the Red Chinese?

A. That he thought we should not have anything to do with them and he should not be over there discussing matters at all with them.

Q. Did he go into detail about this—an opinion as to why Nixon should not be over there?

A. No, I don't believe he did. No.

Q. Did you at any time offer any comments?

A. No.

Q. Were you still meditating?

A. No.

Q. You recall in this conversation about the Red Chinese and his belief Mr. Nixon should not be over there talking to them, the exact language he used against the President?

A. Generally, he was not in accord with President Nixon's actions and that he was going to whip President Nixon's ass.

65 Q. Did he say, "I am going to whip President Nixon's ass"? Did he use the words "President Nixon"?

A. I am going to whip Nixon's ass.

Q. What did he say next?

A. This I cannot recall what the next sentence was.

Q. Was there further conversation?

A. Just a few more minutes of conversation and then I left.

Q. Do you recall the nature of the further conversation?

A. More general remarks about Nixon going to China and then he said in a very low tone, "That I am Jesus Christ."

Q. Was it at this point you got up and left?

A. It was just about then I left.

Q. Why did you leave, Mr. Buchannan?

A. I found the conversation extremely irritating and I had other things that I needed to think about and do, so I left.

Q. Was it irritating because your meditation was being interrupted and you wanted to get away from this guy and plan your day; is that what you mean by "irritating"?

A. Because I did have my day's work ahead of me. I really didn't care to engage in conversation.

Q. When Mr. Rogers first walked up and sat at your table, you thought he was intoxicated and then you said

66 you thought he had been drinking; is that correct?

A. When he was still at the other table I thought this was the normal thing, that he was drinking a little bit and that was possibly the reason for his conduct.

Q. This was the only direct conversation he had with you? You had no further conversation with him after he said he was Jesus Christ?

A. I don't recall. There might have been a passing remark, but I don't recall.

Q. When you left, did he remain seated at your table?

A. He was still seated at my table when I got up to leave and my back was turned and whether he remained seated there, I do not know.

Q. Mr. Buchannan, what was your immediate reaction to this conversation with Mr. Rogers?

A. I am not sure I understand what you mean by "immediate reaction"?

Q. What did you think when he came out with these statements?

A. I don't know how to tell you other than I thought they were a little bit irregular and irrational.

Q. Did you think he was serious?

A. I don't think I formed a conclusion in my mind whether he was serious or not.

Q. Did you at any time think about calling the

67 police because of the statement he made about Mr. Nixon?

A. No, I didn't.

68 * * * * *

69 THOMAS J. PAGE, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

564-964—74——4

DIRECT EXAMINATION

By Mr. GREER:

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Q. State your name and address for the jury, please?

A. Thomas J. Page, 2722 Alton Lane, Shreveport.

Q. I direct your attention to the date of March 24, 1972. On that date were you employed as a police officer?

A. Yes, sir, I was.

Q. On that date did you have occasion to come in contact with the defendant, George Herman Rogers?

A. Yes, sir, I did.

Q. Do you recognize him today?

A. Yes, sir.

Q. Would you point him out, please?

A. The man with the gold shirt and brown suit.

Q. Were you called out to the Holiday Inn North in Shreveport on that date?

A. Yes, sir, I was.

Q. When you got out there did you talk with certain witnesses out there?

A. Yes, sir, when I received the radio call headquarters stated there was a disturbance at the Holiday Inn. At the time I arrived I didn't know the nature of the disturbance and I talked to the switchboard operator and two or three waitresses.

78 Q. Without going into what they told you, did you talk to several people out at the Holiday Inn?

A. Yes, sir, I did.

Q. Did you determine the nature of the disturbance?

A. Yes, sir.

Q. Did you take the defendant into custody on that morning?

A. Yes, sir, I did.

Q. Where was he physically in the motel when you took him into custody?

A. He was in the area immediately in front of the cashier's window in the main lobby area of the motel.

Q. He was out of the restaurant?

A. Yes, sir.

Q. Did you put him in the patrol car?

A. Yes, sir.

Q. Did you advise him of certain rights after you put him in the patrol car?

A. Yes, sir, I did. I advised him of his constitutional rights guaranteed him under the Miranda Act.

Q. Were you required to do that by your police training and regulations?

A. Yes, sir, I was.

Q. Did he seem to understand those rights as you explained them to him?

79 A. Yes, sir, he verbally acknowledged to me he understood the rights.

Q. Did you coerce or threaten him in any way to waive the rights and make a statement?

A. No, sir.

The COURT. Briefly tell the jury what you told him his rights were?

The WITNESS. I advised the defendant he had the right to remain silent, have an attorney present at the time he was questioned. I asked him if he understood his rights and he said he did and I asked him did he wish to waive those rights and make a statement and he did.

By Mr. GREER:

Q. Did he appear in possession of his faculties so he understood what he was doing?

A. Yes, sir.

Q. What did you ask him at this point?

A. I asked him if he had been in the motel creating a disturbance and he said he had been in there talking. I said, "Did you make any reference to the President or make any threats to the President"?

He said he didn't like the idea of the President going over and making friends with our enemies and they were going to take over the country and he didn't have to

80 make friends with them and he was going to Washington. He said, "I'm going to Washington and I'm going to beat his ass off. Better yet, I will go kill him.

Q. Did he acknowledge he said he was going to beat his ass when he was in the restaurant? While you were questioning him, did he admit he made the statement regarding beating the President's ass while he was in the restaurant?

A. Yes, sir, he did, and at that point I placed him under arrest.

Q. Did you ask him if he made any further statements regarding the President to the waitresses?

A. Yes, sir, he made the statement he was going to Washington and beat Nixon's ass off, and better yet, he was going to kill him. The statement he made to the waitresses, he was going up there and just whip him.

Q. What about with reference to killing him? Did he say he made that statement?

A. Yes, sir, he acknowledged he made both statements in regard to the President.

Q. You questioned him regarding his actions previously in the restaurant; is that right?

A. Yes, sir.

Q. You said he acknowledged he made those statements?

A. Yes, sir, he did.

Q. Did you go into further conversation with him
81 or did he discuss this matter with you further?

A. He did in the patrol car when he acknowledged making remarks in the motel to the waitresses. Before I questioned him any further, I advised him of his rights.

Q. You had advised him prior to him giving you any of this information; is that right?

A. Yes, sir.

Q. What else did he say on the way back to the station?

A. He started talking about he didn't like the President going to China making friends with our enemies; that they were going to take over the country and he didn't have any business over there making friends with them. He also started talking about he didn't like communists and he was going to hitchhike up to Washington. That he was going up there. He became a little irritated or upset with the President for doing it and I changed the subject and got on to the subject of his family. I asked him where he lived and how long he was gone from home.

Q. Before you were able to change the subject, did he indicate what, if anything, he might do to the President?

A. Yes, he was going up there to beat Nixon's ass off, and better yet, he was going to kill him.

Q. You did smell some alcohol on his breath?

A. Yes, sir. When I started talking to him I

82 detected a faint odor of alcohol.

Q. How significant an odor was it?

A. Just a faint whiff, like passing someone on the street and getting a whiff of perfume. It wasn't enough to impair his speech or make him unsteady on his feet. He had complete control of his faculties.

Q. He didn't slur his speech?

A. No, sir.

Q. And he was steady on his feet?

A. Yes, sir.

Q. You did interview him in your patrol car on the way back to the station?

A. Yes, sir, I did.

Q. Did he appear uncoordinated at all?

A. No, he did not.

Q. In your work have you had frequent contact with people who were intoxicated?

A. Yes, sir.

Q. Was it your opinion he was or was not intoxicated?

A. He was not intoxicated.

Q. Was there any evidence at all he was under the influence of alcohol or drugs?

A. No, sir, there wasn't.

Q. And you have had experience with both as a police officer; is that right?

83 Q. Who did you turn him over to at the police station?

A. I took him into the detective office and Detective Burson was at the desk and he asked me could he help me and I said "Yes, sir." We went into the office.

Q. Did you leave the defendant with Detective Burson?

A. Yes, sir, Detective Burson taken him in the office and talked to him a few minutes and I waited outside.

CROSS EXAMINATION

By Mr. PARNELL:

* * * * *

84 Q. This was a call to go to the Holiday Inn?

A. Yes, sir. I got the call form headquarters and they said, "Signal 66 Holiday Inn, North Market." Signal 66 is a disturbance call.

Q. What is a disturbance?

A. A disturbance can be anything from a bunch of kids horsing around in the lobby—anything disrupting the normal activities of the motel.

Q. Did you use your siren to go to the Holiday Inn?

A. No, sir, I did not.

Q. Did you use your red light to go to the Holiday Inn?

A. Yes, sir, I did.

Q. Do you have any idea how long it took you to get to the Holiday Inn?

A. I would say five or six minutes. I do remember it was raining real hard that morning and I took it a little easy.

Q. Did you park directly in front of the Holiday Inn?

A. Yes, sir.

Q. Were you alone?

A. Yes, sir.

Q. Who did you first see when you walked into the Holiday Inn?

A. When I first walked in, I looked to my left to
85 the switchboard operator and she pointed into the dining room area and I walked in.

Q. Did you talk to someone in the dining room area?

A. Yes, sir, I talked to the waitresses and also the cashier.

Q. Did they point out the defendant to you?

A. Yes, sir.

Q. Where was he?

A. He was in the lobby area next to the front office.

Q. Had you passed him when you came in?

A. When I came in, I was more or less standing in the doorway of the dining room and I could see him standing there.

Q. How long did you talk to the waitresses?

A. Maybe five minutes.

Q. Did they immediately point the defendant out to you?

A. They explained to me what happened and they turned and pointed out the defendant to me.

Q. Did you then walk over to the defendant?

A. Yes, sir.

Q. Did he make any move to try to get away from you?

A. No, sir.

Q. Did he cooperate with you?

A. Yes, sir, he did.

86 Q. Did you arrest the defendant when you walked up to him?

A. No, sir, I briefly spoke to him for a moment.

Q. What did you say to him first?

A. I asked him if he had been in the dining room bothering the people in there. He said he had been in there.

Q. What did you say to him next?

A. I can't remember exactly what I said to him, but I told him the people in there said he had been creating a disturbance and also was making threats against the President.

Q. Did you at that time tell him to go to the car?

A. Yes, sir.

Q. Did you say, "You are under arrest"?

A. Yes, sir, and I handcuffed him.

Q. Where did you handcuff him?

A. At the front door of the Holiday Inn.

Q. Did you tell him why he was under arrest?

A. Yes, sir, I did.

Q. Why did you arrest him?

A. I arrested him because he was in an establishment creating a disturbance and he made remarks or threats against the person of the President.

Q. Did you tell him that?

A. I told him he was under arrest because he threatened to go to Washington and whip the President. I believe that's what I told him.

87 Q. I believe you testified earlier you had advised him of his rights in the car?

A. Yes, sir.

Q. Did he make any statements to you prior to getting in the car?

A. When we were walking out to the door he stated he didn't like the idea of the President going to Red China making friends with our enemies and he was going up there and whip his ass.

Q. He said this between the time you arrested him and the time you put him in the car; is that correct?

A. Yes, sir, he was just talking as we were walking out.

Q. Was he talking to you?

A. Yes, sir, I was the only one around so I presume he was talking to me.

Q. Did you answer him?

A. No, sir, I did not.

564-964—74——4

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Q. After you got him in the car and advised him of his rights, did you ask him anything further about how he was going to whip the President's ass?

A. When we first got in the car I remember him making a statement about the handcuffs hurting his hands and I said, "Don't move your hands because they will tighten up", and this was department procedure.

88 I said, "Why do you feel like that?"

He said, "Because I don't like the idea of him making friends with our enemies because they are going to take over the country and I don't like the idea of him making friends."

Q. Did you search him?

A. I pat searched him.

Q. Before or after you put the handcuffs on him?

A. After I put the handcuffs on him.

Q. Did you find any weapon?

A. No, sir.

Q. Did you remove anything from his person?

A. I don't think so.

Q. He had no dangerous objects on him?

A. No, sir.

Q. Did he tell you he was going to Washington?

A. Yes, sir.

Q. Did he give you a date?

A. He didn't give me a date. He said he was walking up there because he didn't like cars.

Q. Did he say when he was going to begin this journey?

A. He said he was on his way there and he was tired and wanted to go in out of the rain.

Q. Did he mention anything to you about Tex-

89 arkana at any time?

A. I don't remember if he did.

Q. Was most of his conversation with you about the President being in Red China or going to China?

A. Most of his conversation was based around the fact that it irritated him about the President going over there to make friends with our enemies and he didn't like it.

Q. At what point in time did you notice the smell of alcohol on his breath?

A. When I first started talking to him.

Q. In your experience as a police officer, does the amount one drinks determine the smell on the breath?

A. By that you mean, the more you drink the stronger the smell?

A. No, sir.

Q. This man could have had one drink or three fifths of whisky and you would not have known which he had?

A. Right.

The COURT. That is from the odor on his breath alone, is that what you mean?

The WITNESS. Yes, sir. The only way we can determine the amount a person consumes is through a blood test.

The COURT. If a man drinks three fifths of whiskey

90 is he able to walk steady?

The WITNESS. No, sir, if he drinks three fifths of whisky he would be dead.

By Mr. PARNELL:

Q. Over which period of time are you talking about?

A. You mean how long it would take him to get that much in his blood?

Q. Yes.

A. It depends on the person. You could drink straight alcohol and get a higher amount in your blood.

Q. Have you not arrested men that you smelled liquor on their breath and they appeared to be able to talk and walk and not appear to be drunk but only smell alcohol on their breath and then tested them only to find that they are drunk. Has this ever happened to you in your experience as a police officer?

A. I don't understand you.

Q. Have you arrested a man with an odor of whisky on his breath whose speech was not impaired and who could walk without a wobble and run a blood test or breath test and find that, in fact, he was drunk?

A. The only time that happened is when they are arrested for DWI.

Q. Has that not happened?

91 A. Yes, sir, on DWI.

Q. Did you give him a blood test?

A. No, sir.

Q. Did you give him a breath test?

A. No, sir, we don't have the facilities in the department at the time I worked there.

Q. Would you explain to me where you took him to the Police Station when you got there?

A. Directly to the detective office.

Q. Was that normally where you take somebody after you arrest him?

A. It would depend on the seriousness of the charge involved, and not being completely sure of the charge you want to place against him, we take him to the detective office.

Q. Were you sure of the charge you were going to place against him?

A. Yes, sir, I was sure.

Q. What charge?

A. I don't remember the title of it but it was under threats against the President.

Q. It was not under the disturbance?

A. No, sir.

Q. Was there some question in your mind? Why did you take him to the detective office?

92 A. Because since I was going to try to find out what was wrong or what he could be charged under, I take him to the detective office because at the patrol desk where you would normally take a person there is no facilities to hold a person.

Q. Normally, when you arrest a person you take him to the booking desk?

A. That's right.

Q. What is done at the booking desk?

A. Charges are filed and his name is placed on the book and he goes to the jail.

Q. Do they put clothes on up at the jail?

A. Yes, sir.

Q. You bypassed the booking desk?

A. No, sir, I didn't bypass the booking desk.

Q. Did you book him?

A. No, sir, I didn't book him.

Q. What did you do at the booking desk?

A. I didn't do anything at the booking desk. I took him to the detective office.

Q. Which detective?

A. Detective Bill Burson.

Q. Did you have any conversation with Detective Burson?

A. Yes, sir, I did. When I first took him in the
93 detective office, Detective Burson asked me what have you got and I explained it to him and he says, "Come back here and let me talk to him." And they went back to the office and I walked back with them. I removed the handcuffs and went back up to the front office.

Q. How long did Detective Burson talk to Mr. Rogers?

A. I don't know, ten or fifteen minutes.

Q. Did he call you back into his office?

A. Yes, sir.

Q. Did he tell you to take him to the booking desk?

A. No, sir. I went back in his office and got the information and took his name and all the information I could get and run him through the crime information center in Washington, D.C.

Q. Did this turn up anything?

A. No, sir, there was nothing on him.

Q. Did you then take him down and book him?

A. I went back and talked to Detective Burson and I was told to take him to the VA and place a hold on him.

Q. Did you ever take Mr. Rogers up to the jail?

A. No, sir.

Q. Was he under arrest?

A. Yes, sir.

Q. Did he ever go into the jail at the Shreveport Police Station?

94 A. Yes, sir.

Q. Did you take him to the VA Hospital?

A. Yes, sir.

Q. What time did you take him to the VA Hospital?

A. I don't know the exact time but as soon as Detective Burson finished talking to him, I took him over to the VA.

Q. Did Detective Burson instruct you to take him to the VA Hospital?

A. Yes, sir.

Q. How did you learn he was a patient at the VA Hospital?

A. Detective Burson told me. I don't know how he found out. I wasn't in the room at the time he was talking to him.

Q. You said he instructed you to take him to the VA Hospital and place a hold on him?

A. We use that when a man is involved in a crime and instead of taking him to the jail we will take him to the hospital and ask them to place a hold on him and we would pick him up.

Q. Did you put a hold on him at the VA Hospital?

A. I told the attendant to hold this man because we probably wanted to talk to him again.

Q. Is it necessary to place a hold on him—is it nec-
95 essary to sign any kind of form with the hospital to place a hold on him?

A. No, sir, it isn't.

Q. You can verbally tell the hospital to hold a man in the room?

A. It isn't to hold the man in the room. Before they discharge a person, they will call up and we will pick him up.

Q. Was he admitted to the VA Hospital in Shreveport on March 24, 1972, to your knowledge?

A. Yes, sir, to my knowledge he was.

Q. You placed the hold on him?

A. Yes, sir, I did.

Q. In a hold, does it state what crime the man has been involved in?

A. No, sir.

Q. Did you report this incident to anyone else?

A. What do you mean?

Q. About Mr. Rogers making these threats—did you report that to anyone else—any other agency?

A. I did not, Detective Burson did.

Q. In your conversation with the defendant going to the Police Station, did you think the threats he made, in your opinion, were serious and he meant them?

A. I don't know. He is the only one who can an-
96 swer that.

Q. I am asking you?

A. I don't know.

Q. Did they upset you?

A. Yes, it shook me up a little bit.

Q. Were you scared?

A. No, sir, I wasn't scared.

Q. Have you ever heard anyone else make statements like this before during your police work?

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A. No, sir, that's what shook me up because I was never exposed to a thing like that before.

Q. What specifically shook you up?

A. The fact that he made the statement he was going to Washington to beat Nixon's ass off, and better yet, "I am going to go kill him." And the fact that we had Presidents assassinated, and attempted assassinations and I didn't know whether he was mad or whether he meant it. I didn't know.

Q. You don't know whether he was mad or drunk?

A. He was upset by his actions.

Q. Would you say he was rational?

A. Yes, sir.

Q. Acting normally?

A. Yes, sir.

Q. On the booking, I am still somewhat confused. Has
97 this man ever been booked on this charge, to your knowledge?

A. No, sir.

Q. To your knowledge, did the City Police receive any notice of his discharge from the VA Hospital?

A. No, sir.

Q. To your knowledge, was there any follow-up on what happened to Mr. Rogers on March 24, 1972?

A. Yes, sir.

Q. What was made?

A. I had been looking for him on that day in Shreveport because Mr. Farnsworth was looking for him.

Q. Did they say they saw him that day?

A. Yes, sir, they did.

Q. Do you recall who you spoke to that saw him?

A. No, sir.

Q. When did you next see Mr. Rogers?

A. This morning.

Q. Was an all points bulletin put out to pick Mr. Rogers up?

A. Yes, sir.

Q. Where did you look for him first?

A. I went back to the VA and looked around the grounds and he wasn't there. Then we started riding the streets immediately adjacent to it and spread out gradually from there. Since he was headed toward Texarkana we
98 looked for him in that area up there.

Q. Did you find him?

A. No, sir.

Q. Mr. Page, normally when a man shook you up by his statements—normally in this situation, would you take a suspect to a hospital and turn him over to an admitting clerk and leave?

A. If I was instructed to do that, that's what I will do.

Q. Even though the charge may be very serious?

A. Even though the charge may be very serious.

Mr. PARNELL. That's all I have.

RE-DIRECT EXAMINATION

By Mr. GREER:

Q. Was it your information that the defendant escaped from the VA?

A. I don't believe they used the term "escape". They said "walked off". All the hosptals tell us they walked off.

Q. He had not signed out; is that right?

A. Right.

Q. No one at the VA knew of his location; is that correct?

A. That's right.

99 Q. When you arrested the defendant did you do any interrogation of him prior to advising him of his rights?

A. No, sir.

Q. Is threatening the President an unusual occurrence for a city police officer to be involved in?

A. Yes, sir, it is.

Q. It is a federal crime; is that right?

A. Yes, sir.

* * * * *

WILLIAM BURSON, recalled as a witness on behalf of the Government, having previously been duly sworn by the Clerk. testified further as follows:

DIRECT EXAMINATION

By Mr. GREER:

* * * * *

100–101 * * * * *

102 * * * * *

Q. What was said in that interview between you and the defendant, as best you can recall?

A. To the best of my ability, the defendant, in talking to him, as I understand it he created a disturbance out at the motel and Mr. Rogers told me he was concerned about President Nixon going to China and betraying the country dealing with the Chinese over there and he felt something should be done to Mr. Nixon and he himself was going to whip Mr. Nixon on account of the action he taken going over there.

Q. Was he going to do this himself?

A. This is the impression he gave me.

Q. As best you recall, what words did he use in expressing what he was going to do?

A. The exact words were that he was going to Washington and whip President Nixon's ass.

Q. Do you recall anything else he said during this conversation?

A. Not that I remember right now.

Q. Did he indicate to you where he might be going

103 directly from Shreveport?

A. He indicated he was going back to home in Maude, Texas, and then on to Washington.

Q. As a police officer, have you had frequent occasions to come in contact with people who are intoxicated?

A. Yes, sir, very often.

Q. You are aware of the characteristics of an intoxicated person?

A. Yes, sir, I am.

Q. Did the defendant have any of these characteristics?

A. He didn't show any that I could tell. I couldn't detect any odor of alcohol at that time.

Q. Was his speech slurred or unsteady?

A. No, sir.

Q. Did you see any watering or redness in his eyes?

A. No, sir.

Q. Did he stumble or stagger or was he walking steady?

A. He walked steady, as far as I could tell.

Q. You didn't see any indication of intoxication?

A. No, sir.

Q. Was there any indication to you he was not in control of his faculties?

A. None that I could tell.

* * * * *

104 CROSS EXAMINATION

By Mr. PARNELL:

105 * * * * *

Q. Did you at any time ever tell the defendant he was under arrest and was going to be booked for threatening the President?

* * * * *

A. No, sir.

Q. Why was Mr. Rogers not booked?

106 A. He was not under arrest at that time—at the time I was talking to him.

Q. In other words, you have to arrest somebody before you book them?

A. Yes, sir.

Q. Was he at any time arrested?

A. Not by me.

Q. By the Shreveport City Police Department?

A. I don't know that.

Q. Was he arrested on March 24, 1972?

A. Not to my knowledge.

Q. You did not arrest him?

A. No, sir.

Q. You did not book him?

A. No, sir.

Q. Did he go to the jail?

A. Not that I know of, he didn't.

Q. You said it is not unusual to be brought down for an interview and released?

A. That's right.

Q. Was Mr. Rogers released?

A. I sent him back out—I forget where it was at.

Q. Did you tell Officer Page to take him wherever it was and dump him and release him?

A. Right, sir.

107 Q. You didn't tell him to stay around and watch him?

A. No, sir.

Q. Or to tell these people to hold him?

A. No, sir. To the best of my recollection I might have. I don't remember right now.

Q. When Mr. Rogers left your office you were through with him?

A. For right then, yes, sir.

Q. What statements did he make to you in your office about the Red Chinese or communists?

A. He just stated his disagreement in the way President Nixon had gone over to China and was dealing with the Chinese. He more or less felt the President was selling us out and was a traitor in getting with these people.

Q. Did you have a conversation with him?

Did you express an opinion about what the President was to do?

A. No, sir.

Q. What else did he say about the President's trip over there?

A. He felt he was selling us out to the Chinese and felt something should be done about it.

Q. What specifically did he say that should be done about Nixon selling us out?

A. He said something should be done and he was

108 going to Washington and whip Nixon's ass.

Q. Are those his exact words?

A. To the best of my recollection, yes, sir.

Q. What did you think when he said that?

A. I don't know what I thought.

Q. Did you believe him?

A. I didn't know for sure right then.

Q. Did he explain it any further?

A. We talked for a while just in general.

Q. In general about what?

A. About where he was from and what he was doing and where he was going.

Q. Did you talk to him any further about his beliefs with respect to Mr. Nixon selling us out?

A. Not at any great lengths, no, sir.

Q. Did you think this was a serious statement he made that he was going to beat up Nixon?

A. I would consider it to be a serious type of statement.

Q. Did he tell you when he was going?

A. No, sir.
Q. Did he indicate how he was going?
A. No, sir.
Q. Did he indicate how he would beat him up?
A. No, sir.
109 Q. Did he have a weapon on him?
A. No, sir.
Q. Did he have any dangerous objects on him at all?
A. No, sir, he did not.
Q. Do you recall why he was not charged with anything by the City Police Department?
A. At the time I didn't have nothing to charge him on myself. As far as the disturbance at the motel, that was a city ordinance. I made my report and forwarded my copy to Mr. Farnsworth.
The COURT. You didn't realize it was a violation of the Federal law to threaten the President?
The WITNESS. No, sir, I did not, Judge.
The COURT. And you didn't know the Secret Service guarded the President's safety?
The WITNESS. Yes, sir, I knew that.
The COURT. You didn't know there was a Secret Service Agent in Shreveport?
The WITNESS. Yes, sir, I knew Mr. Farnsworth, but this was my first time on something like that.
By Mr. PARNELL:
Q. Obviously, you didn't think this was serious enough to hold him over?
A. The main thing, at the time this happened I
110 didn't know the correct procedure as to what to do and where to go, so I forwarded my copy to Mr. Farnsworth.
Q. You turned a man loose who just made a threat against the President because the procedure involved was with Mr. Farnsworth?
Mr. GREER. He didn't say he turned him loose. He said he turned him over to Officer Page to turn him over to an institution which he doesn't recall the name of.
The COURT. That is my recollection of his earlier testimony.

By Mr. PARNELL:
Q. You did not charge the defendant?
A. I did not put him in jail.
Q. To your knowledge, has he ever been charged by the Shreveport Police Department?
A. No, sir, not to my knowledge.
Q. For threatening the President's life?
A. No, sir, not to my knowledge.
Q. Did you mail a report to Mr. Farnsworth?
A. Yes, sir, I had a copy sent to him.
Q. How?
A. Through our Records Department.
Q. How long would it take for the report to reach
111 Mr. Farnsworth?
A. Probably a day.
Q. It would be typed up that day and mailed out that night?
A. Yes, sir.
Q. Did Mr. Farnsworth contact you?
A. He did.
Q. He wanted you to pick up Mr. Rogers?
A. Yes, sir.
Q. Where did you look for Mr. Rogers?
A. Anywhere in Shreveport we could look.
Q. When did he notify you he wanted to talk to him?
A. I don't recall how long it was after we had Mr. Rogers in the office.
Q. Have you had any further contact with Mr. Rogers since March 24, 1972?
A. No, sir.
Q. To your knowledge, was President Nixon in Shreveport that day?
A. No, sir, not to my knowledge.
Q. To your knowledge, was he in the State of Louisiana?
A. Not to my knowledge, I don't know.
Q. Do you know if he was in China?
A. According to the papers, he was.
Q. He was at that time in China?
112 A. I don't know about that time. I don't know where he was at that time.
Mr. PARNELL. That's all I have.

RE-DIRECT EXAMINATION

By Mr. GREER:

Q. Mr. Burson, you are a representative of the Shreveport City Police Department, are you not?

A. Yes, sir.

Q. And were on the date in question?

A. Yes, sir.

Q. Is threatening the President a crime of the City of Shreveport?

A. No, sir.

Q. It is a Federal crime; is that right?

A. Yes, sir.

Q. You couldn't have charged him with this crime; is that correct?

A. No, sir.

Q. Could you have told Officer Page to put a hold on the defendant at the place he took him to?

A. Yes, sir, I could have.

Q. But you don't recall?

A. I don't recall whether I did or not.

* * * * *

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Dr. ANDREW J. MULLEN, called as a witness on behalf of the Government, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. GREER:

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Q. Doctor, based on your examination and history of the defendant, are you able to give us an opinion as to the defendant's sanity on March 24, 1972?

A. Yes, sir. In the report I sent I said I thought he was competent and I said as to the exact situation when the alleged offense occurred that it would depend on his drinking, and in my opinion he would have been competent.

Q. In your opinion, did he have a mental disease or defect on that date?

A. No, sir. I said I felt he represented a personality disorder and I thought he may have another type of illness and asked for his history from the VA to aid or confirm this, but I did not feel so.

Q. Have you examined certain records from the VA?

A. Yes, sir.

Q. Specifically, did you examine a report from Dr. Sam Thomas, a consulting psychologist?

A. I did.

Q. Did this report assist you in making your diagnosis as you have testified today?

A. Not necessarily assist. It didn't change anything.

116 Q. Was it consistent with your diagnosis?

A. The report from the psychologist said because he is a personality disorder, which is inconsistent with what I said. I didn't know when I saw him. He could have been sick at that time.

Q. Does personality disorder rise to the form of mental disease?

A. Not as described by the Blake decision, no.

Q. Do many people have personality disorders?

A. Yes.

Q. Is this a common thing?

A. Yes, sir.

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The WITNESS. Yes, sir. Recalling from the report he was administered a personality profile, which is objective psychological test where the individual answers a number of questions. It was reported this gentleman placed Mr. Rogers in the classification of a personality disorder. I would have to look at it to see what type. They call it emotionally unstable personality.

By Mr. GREER:

Q. Does that indicate mental disease or defect to you, Doctor?

A. Again, it is a diagnosis but I wouldn't consider

119 it under my Blake test.

Q. Your opinion, did the defendant lack substantial capacity to appreciate the wrongfulness of his conduct on the date in question?

A. No, except the one qualification that I didn't know his status as far as intoxication.

Q. Was there any indication to you that he might be intoxicated?

A. No, there was not.

Mr. GREER. I tender the witness.

The COURT. Assuming, Doctor, a lay person, including police officers with considerable experience in handling intoxicated persons, had close contact with him on the date in question, March 24, 1972, and one of the officers testified there was a faint odor of alcohol on his breath but that he walked steadily, he spoke without slurring, he readily responded to questions in a coherent, understanding manner, and so forth, would that lead you to believe the man was intoxicated where he had no capacity to control his conduct?

The WITNESS. Based on the police officer's report, yes, I would assume so.

120 CROSS EXAMINATION

By Mr. PARNELL:

Q. Dr. Mullen, did Mr. Rogers give you a personal history at your first examination?

A. Yes, sir, some history.

A. There had been some family difficulties he referred to. I don't have exactly chronologically concerning some difficulty with his stepfather. There was some problem in which he had been injured and got in a fight with him and he had been shortly at the VA Hospital—he was there in 1972.

121 I'm not sure of the date. The thing with the stepfather occurred several months ago. I think he told me there were five children. He denied any other difficulty with the law.

By Mr. PARNELL:

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Q. Also in your report, Doctor, you say, "I think this man probably shows a chronic psychotic illness that is made worse by his drinking." Explain that statement?

A. I couldn't tell at that time, but I felt he was in the personality category because of the VA Hospital relation and I did not recall for sure whether he was service

123 connected, that he possibly could be an individual who had a psychotic illness which could be brought on by drinking and this is why I asked for the reports from the VA.

Q. Did he exhibit any dangerous tendencies to you?

A. No, sir, I did not feel he showed any dangerous tendencies.

* * * * *

RE-DIRECT EXAMINATION

By Mr. GREER:

Q. Doctor, Mr. Parnell asked you about dangerous tendencies. Did you find any indication of dangerous tendencies in any of the reports you examined?

A. No, sir. One report described the type of personality—again, the VA report said these people are impulsive and have trouble controlling hostility. I wouldn't take that as being dangerous.

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JOHN CLAYTON, called as a witness on behalf of the defendant, being first duly sworn by the Clerk, testified as follows:

126–127 * * * * *

DIRECT EXAMINATION

By Mr. PARNELL:

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Q. I think you testified the next time you saw Mr. Rogers was Thursday, March 23rd, 1972?

A. Yes, sir.

Q. Where did you see him?

A. I saw him at the same place, the Subway.

Q. What time of day did you first see him?

A. About 9:00 in the morning.

129 Q. Was there any other people there?

A. Yes, sir, this friend of mine, John Escoval was there.

Q. Was Mr. Rogers there?

A. Yes, sir.

Q. Did you all have a drink?

A. Yes, sir.
Q. What were you drinking?
A. We were drinking Old Forrester and beer. Some of them had a drink or two of wine but I didn't drink any wine myself.
Q. Did you see Mr. Rogers take a drink?
A. Yes, sir.
Q. You remember approximately what time you saw him take his first drink?
A. I would say it was around 9:00.
Q. You recall what he was drinking?
A. He was drinking Old Forrester with us.
Q. Was he drinking anything else?
A. He was drinking beer.
Q. Were you drinking from a fifth?
A. I didn't drink out of the fifth but I drank out of the pints.
Q. How many bottles did you have?
A. We got about five pints of Old Forrester.
130 Q. How long did you drink on this occasion?
A. I left the Subway around 2:00, 2:30.
Q. Was Mr. Rogers with you during this whole period?
A. Yes, sir.
Q. Was he drinking with you during this period of time?
A. Yes, sir, we was all drinking.
Q. Would you tell the jury how you would drink the whisky?
A. We drank it straight.
Q. Straight out of the bottle?
A. Yes, sir.
Q. Would you chase it with a beer?
A. Yes, sir.
Q. What was your condition when you left?
A. I still knew everything and I figured it was time for me to go home and I took off and left. I left my friends behind.
Q. Was Mr. Rogers still there drinking when you left?
A. Yes, sir.

CROSS EXAMINATION

By Mr. GREER:

131 * * * * *

Q. Were you informed by someone what the dates were that you were drinking with Mr. Rogers?
A. No, sir, I just remembered it.
Q. One of them was March 19 and the other was
132 March 23?
A. Yes, sir.
Q. That is almost a year ago; is that right?
A. That's right.
Q. The 19th would have been over a year ago?
A. Yes, sir.
Q. That's what you told Mr. Parnell when he contacted you?
A. Yes, sir.
Q. What time did you leave the Subway on the 23rd?
A. I would say around 2:30.
Q. That is the last you have seen of Mr. Rogers until today?
A. Yes, sir.
Q. You didn't see him at all on the 24th?
A. No, sir.
Q. You don't know what he might have done that day?
A. No, sir, I didn't see him.
Q. What time did you get to the bar on the 23rd?
A. It wasn't a bar. We was just drinking on the street and around the alley.
Q. On the 23rd you were drinking around the street and the alley?
A. Yes, sir.
133 Q. Mr. Rogers was with you?
A. Yes, sir.
Q. Had you planned to meet that day?
A. No, sir, it was by accident.
Q. You and the other friends and Mr. Rogers?
A. Yes, sir.
Q. About what time did you meet?
A. About 9:00.
Q. Is that when you bought the liquor?
A. Yes, sir.
Q. Do you frequently drink in the morning?

A. No, sir, I was just on a little drinking spell.

Q. Liquor is not allowed to be sold before 7:00 in the morning; is that right?

A. It isn't allowed to be sold but if you know where to get it.

Q. You know some places you can get it on Sunday and before 7:00.

A. There is plenty of places.

Q. Did you become intoxicated on the 23rd?

A. I was pretty well intoxicated but I knew everything that was going on.

Q. You knew what you were doing?

A. Yes, sir.

Q. But you feel like you were intoxicated?

134 A. I was intoxicated.

Q. What about Mr. Rogers? Was he intoxicated?

A. I wasn't paying much attention to Mr. Rogers because I was feeling pretty good myself and I wasn't watching other people at that time.

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135–145 * * * * *

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ROXIE EVERETT, called as a witness on behalf of the defendant, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

By Mr. PARNELL:

* * * * *

Q. Mrs. Everett, how long has your son had a drinking problem?

A. I will say around ten years.

Q. On numerous occasions in the last ten years you have been called upon to bail him out of jail?

A. I would say around three or four times a year

147 or more.

Q. Every year for the last ten years?

A. Yes, sir.

Q. Why would he be in jail on those occasions?

A. Just getting drunk and disorderly. Just being drunk.

Q. Have you ever had occasion to see your son intoxicated?

A. Yes.

Q. On numerous occasions?

A. Yes.

Q. On these occasions would he show you any hostility?

A. No.

Q. Did he show you any dangerous tendencies?

A. No, sir.

Q. Has he ever threatened you?

A. No.

Q. In your conversation with him when he was drunk would he ever speak of religion?

A. Yes.

Q. What would he say?

A. He would say he is Jesus Christ. He would always say that.

Q. He would always say that when he was intoxicated?

A. Yes.

148 Q. What jails have you bailed him out of?

A. Texarkana, Texas and Arkansas, New Boston.

Q. How far are these cities from where you live?

A. Texarkana is around twenty miles from Maude, and New Boston is about eighteen miles.

Q. You personally know he has been in more than one hospital for treatment for drinking?

A. Yes, sir.

Q. Do you know the names of these hospitals?

A. Little Rock Veterans Administration and here in Shreveport.

Q. You recall when he was last in the hospital here in Shreveport?

A. About last March, I believe, he was in for about four months.

Q. Do you know why?

A. For a drinking problem.

Q. It is your testimony he had this problem for some ten years?

A. Yes.

* * * * *

CROSS EXAMINATION

By Mr. Greer:

* * * * *

149 * * * * *

Q. You say your son hasn't been a violent person?

A. No, sir.

Q. Has he been involved in some violence with your present husband?

A. They did have a little trouble but they made friends and they are all right now.

Q. Mrs. Everett, the defense offered in evidence D–1, part of which is a report from a psychologist who states your son's behavior may, on occasion, turn aggression outward resulting in aggressive outbursts and make homicidal threats or attempts to act out his behavior on others such as wife and children and others.

From your experience with him, is this an inaccurate statement?

A. No.

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150–175 * * * * *

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CHARGE OF THE COURT

This indictment is based upon an Act of Congress, Title 18, United States Code 871 which provides:

"Whoever knowingly and wilfully makes any threat to take the life of or to inflict bodily harm upon the President of the United States is guilty of an offense against the Government and shall be punished according to law."

Two essential elements are required to be shown in proving the offenses charged in the indictment:

First, the making of a true threat to take the life of or to inflict bodily harm upon the President of the United States, as charged; and, second, making such threat or threats knowingly and wilfully.

The burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged and the law never imposes upon a defendant

177 in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A true threat, as required by the statute, is a serious threat and not words uttered as a mere political argument, idle talk or jest. The full context in which the words were spoken should be considered. This element is not established if the jury finds that the statement made is no more than a method of stating political opposition to the President or if it is only words of dislike against a political party or its platform.

A threat is knowingly made if the maker of it comprehends the meaning of the words uttered by him, and a threat is wilfully made if in addition to comprehending his words, the maker voluntarily and intentionally utters the words as a declaration of an apparent determination to carry out the threat.

Before you convict a defendant under this statute, you must be convinced beyond a reasonable doubt that the defendant intentionally made a statement, either written or oral, in a context and under such circumstances that a reasonable person would foresee that the statement would be interpreted by persons hearing or reading it as a serious expression of an intention to inflict bodily harm upon or to take the life of the President of the United States, and you must be further convinced beyond a reasonable doubt that

the statement was not the result of mistake, duress

178 or coercion. However the statute does not require proof that the defendant actually intended to carry out the threat to kill or harm the President.

* * * * *

179–197 * * * * *

In re: U.S. v. George Herman Rogers Cr. No. 20,225

HAND WRITTEN NOTE

"Will the Court accept the Verdict—'Guilty as charged with extreme mercy of the Court'?"

B. D. FRANK.

HAND WRITTEN NOTE 3/22/73

Delivered to Court at 4:55 p.m. this date by Dy. U.S. Marshall J. L. Jordan, who was instructed to advise the jury that the Court's answer was in the affirmative.

/s/ BEN C. DAWKINS, Jr.,
Ch. U.S. Dist. Judge.

In the United States Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GEORGE HERMAN ROGERS, DEFENDANT-APPELLANT

No. 73-2094

Jan. 14, 1974

Defendant was convicted in the United States District Court for the Western District of Louisiana, at Shreveport, Benjamin C. Dawkins, Jr., J., for knowingly and willfully making verbal threats to take life of or inflict bodily harm upon President of the United States, and he appealed. The Court of Appeals held that under evidence jury could properly conclude that defendant's conduct satisfied essential elements of the offense, and that statute making it unlawful to make threats against President of United States does not require proof that the defendant actually intended to carry out the threats to kill or harm the President.

Affirmed.

Appeal from the United States District Court for the Western District of Louisiana

Before JOHN R. BROWN, Chief Judge, and GODBOLD and SIMPSON, Circuit Judges

PER CURIAM:

Appellant was convicted on each of five counts of an indictment under 18 U.S.C.A. § 871(a) for knowingly and wilfully making verbal threats "to take the life of or inflict bodily harm upon the President of the United States." He was sentenced to five years imprisonment (the maximum sentence available) on count one with parole eligibility to be determined by the Parole Board pursuant to § 4208(a)(2) and to five years imprisonment on each of the other four counts to run concurrently but with sentence suspended on these four counts during good behavior with a five year

supervised probation period to commence after the expiration of the confinement sentence.[1] We affirm.

On March 24, 1972, at about the time of President Nixon's trip to China, appellant, with a long history of chronic alcoholism, entered a Holiday Inn restaurant in Shreveport, Louisiana at 6 a.m. and made statements which were regarded as a threat on the life and limb of the President. The local police were summoned and appellant was taken briefly into custody at which time he made further threatening statements. The local police turned appellant over to the local Veterans Administration hospital although it is unclear whether the hospital was ever aware of the fact. Not until seven days later was appellant arrested on a federal warrant.

[1–6] Appellant challenges the sufficiency of the evidence as well as the propriety of the legal standard applied by the trial court. On the evidence presented, the jury could properly conclude that on each count appellant's conduct satisfied both essential elements of the offense—(1) a true threat,[2] (2) knowingly and intelligently made.[3]

The District Court's instructions on the law are literally in accord with the precedents of the majority of Circuits which have construed the statute. See, e.g., *Roy* v. *United States*, 9 Cir., 1969, 416 F. 2d 874. And in approving them we reject appellant's importunities that we adopt the holding of *United States* v. *Patillo*, 4 Cir. (en banc), 1971, 438 F. 2d 13 affirming 431 F. 2d 293 to the effect that "where * * * a true threat

[1] Appellant was required to join and actively participate in Alcoholics Anonymous as a condition of probation.

[2] The District Court instructed the jury that "a true threat, as required by the statute, is a serious threat and not words uttered as a mere political argument, idle talk or jest. The full context in which the words were spoken should be considered."

[3] The Court further instructed the jury:

"A threat is knowingly made if the maker of it comprehends the meaning of the words uttered by him, and a threat is wilfully made if in addition to comprehending his words, the maker voluntarily and intelligently utters the words as a declaration of an apparent determination to carry out the threat.

"Before you convict defendant under this statute you must be convinced beyond a reasonable doubt that the defendant intentionally made a statement, either written or oral, in a context and under such circumstances that a reasonable person would foresee that the statement would be interpreted by persons hearing or reading it as a serious expression of an intention to inflict bodily harm upon or to take the life of the President of the United States, and you must be further convinced beyond a reasonable doubt that the statement was not the result of mistake, duress or coercion. However, the statute does not require proof that the defendant actually intended to carry out the threat to kill or harm the President."

against the person of the President is uttered without communication to the President intended, the threat can form a basis for conviction under the terms of Section 871(a) only if made *with the present intention* to do injury to the President." (Emphasis added). We decline to do so and instead follow the great majority of the Circuits which have held that it is not necessary to prove an intention to carry out the threat under § 871(a). See *Watts* v. *United States*, 1968, 131 U.S. App. D.C. 125, 402 F. 2d 676, reversed on other grounds, 1969, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664.

Since *Watts*, the Second, Sixth, Ninth and Tenth Circuits have emphasized that an intention to carry out the threat is not required under the statute. *United States* v. *Compton*, 2 Cir., 1970, 428 F. 2d 18, cert. denied, 401 U.S. 1014, 91 S. Ct. 1259, 28 L. Ed. 2d 551; *United States* v. *Lincoln*, 6 Cir. 1972, 462 F. 2d 1368, cert. denied, 409 U.S. 952, 93 S. Ct. 298, 34 L. Ed. 2d 224; *Roy* v. *United States*, 9 Cir., 1969, 416 F. 2d 874; *United States* v. *Hart*, 10 Cir., 1972, 457 F. 2d 1087, cert. denied, 409 U.S. 861, 93 S. Ct. 150, 34 L. Ed. 2d 108.

Of course under F.R. Crim. P. Rule 35, appellant may, within 120 days of the issuance of our mandate, seek a reduction of the stringent sentences imposed in the District Court.

Affirmed.

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1973

No. 73-2094

D. C. Docket No. CR 20225-s

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GEORGE HERMAN ROGERS, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Western District of Louisiana

Before BROWN, Chief Judge, GODBOLD and SIMPSON, Circuit Judges

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 14, 1974.

Issued as Mandate: FEBRUARY 5, 1974.

Supreme Court of the United States

No. 73-6336

GEORGE HERMAN ROGERS, PETITIONER

v.

UNITED STATES

ORDER ALLOWING CERTIORARI. Filed October 15, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE: 1974